STATE OF NEW YORK

1476--A

2019-2020 Regular Sessions

IN SENATE

January 15, 2019

Introduced by Sens. HOYLMAN, BAILEY, KRUEGER, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to direct the department of financial services to study, evaluate and make recommendations concerning lending practices by financial institutions to landlords acquiring property that includes small business tenants and/or rent-regulated tenants

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. 1. For the purposes of this act:

(a) "financial institution" shall include, but not be limited to, a commercial bank, trust company, savings institution, credit union, or any other entity authorized to originate and service loans;

(b) "small business" shall mean a business that meets the definition of a small business as defined by the United States Small Business Administration; and

(c) "mezzanine debt" shall mean debt carried by a borrower that may be subordinate to the primary lien and/or common shares and reported as assets for the purposes of financing such primary lien.

2. The department of financial services is hereby authorized and directed to prepare or have prepared a study to review the process in which financial institutions provide loans to landlords acquiring or refinancing property that includes rent-regulated and/or small business tenants. Such study shall examine and report by type of lender, range of building sizes, and any other criteria that would show trends in predatory equity and shall include, but not be limited to:

(a) whether and how financial institutions are considering the following factors when reviewing a landlord's loan application:

(i) debt service coverage ratio;

(ii) capitalization rate;

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD02520-05-9

(iii) gross rent multiplier;
(iv) loan to value; and
(v) net operating income, including income and expenses;
(b) whether and how financial institutions are including the following factors in their underwriting calculations of debt:
(i) sources of income, including residential rent, commercial rent and maintenance from cooperative apartment owners, and how financial institutions verify the accuracy of such information;
(ii) current rent charged and projected rent increases to be charged in the future;
(iii) the number and size of units in a building and whether such units are used for residential, commercial or another use;
(iv) whether any preferential rent is charged and any projections to terminate such preferential rent in the future;
(v) the number of vacant units in a property, including whether such units are classified as market rate, deregulated or rent-regulated and how many vacant units are used for commercial or another non-residential use;
(vi) whether individual apartment improvements will be performed on any vacant units;
(vii) the number of rent-regulated units at the time of loan origination and how the financial institution verifies those numbers with the division of housing and community renewal;
(viii) any projected construction or major capital improvements planned for the property;
(ix) projections of any turnover in rent-regulated apartments;
(x) number of buildings financed in the loans; and
(xi) whether the property has received any government operating or capital subsidies and explanation of any such subsidies;
(c) whether financial institutions are considering only currently established rents and reasonable maintenance costs when determining the net operating costs for the property such that they are acting in the best interest of the long-term affordability and stability of the local community;
(d) whether financial institutions are adequately examining the types of capital improvements included in the landlord's plans for the property;
(e) whether financial institutions are using accurate appraisal values and appropriately doing so;
(f) whether financial institutions are ascertaining whether the landlord is taking on more debt than the property can support, including any mezzanine debt on such property;
(g) whether financial institutions are considering a landlord's additional private equity including the source of such equity;
(h) whether financial institutions are considering a landlord's additional debt on the building or buildings including debt from other lenders and whether financial institutions are considering any other outstanding debt a landlord has outside of the loan applied for;
(i) how financial institutions are evaluating public records of landlords and property managers including, but not limited to liens and violations against them;
(j) whether and how financial institutions monitor the number of rent-regulated units in a building prior to and after a loan disbursement;
(k) whether mortgages include clauses that require a certain debt service coverage ratio or debt yield which are predicated on rent increases or tenant turnover;

(l) whether financial institutions consider the use of additional financing, including mezzanine debt, and how this financing is factored into the underwriting of the loan, including examining the risks associated with transactions in which mezzanine debt is used;

(m) whether the use of mezzanine debt to finance projects involving rent-regulated and/or small business tenants is advisable, and if there is increased risk of foreclosure as short-term interest rates rise and the cost of mezzanine financing increases; and what can happen to such tenants and small businesses if there is more debt on a property than the property can support; and

(n) any other criteria the department of financial services deems necessary to understand the nature and frequency of predatory equity.

§ 2. No later than eighteen months after the effective date of this act, the department of financial services shall report to the legislature and the governor on the findings of the study conducted pursuant to section two of this act including on the scope, nature and frequency of involvement in predatory equity throughout the financial industry and any legislative recommendations deemed to be necessary.

§ 3. This act shall take effect immediately.